

Amendment No. 2 to HB1769

Sargent  
Signature of Sponsor

**AMEND Senate Bill No. 2076**

**House Bill No. 1769\***

by deleting all language after the caption and by substituting instead the following:

WHEREAS, the General Assembly finds that rail carriers have historically paid tax on the fuel used to provide their services and should continue to do so; and

WHEREAS, the fuel used by rail carriers is currently subject to sales tax under Tennessee Code Annotated, Title 67, Chapter 6; and

WHEREAS, the application of sales tax to such fuel is currently subject to a court challenge; and

WHEREAS, if the sales tax applicable to such fuel is determined by the courts to be preempted or otherwise invalid, it is the intent of the General Assembly that rail carriers pay a tax at substantially the same rate and in substantially the same manner as motor carriers under Tennessee Code Annotated, Title 67, Chapter 3; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-3-202(c), is amended by deleting the subsection and substituting instead the following language:

(c) Except when used by a commercial carrier to produce power for a means of transportation as defined in the Transportation Fuel Equity Act, compiled in part \_\_\_ of this chapter, diesel fuel that is indelibly dyed in accordance with internal revenue service regulations and is legal for exempt use only shall not be considered subject to the diesel tax imposed under this section.

SECTION 2. Tennessee Code Annotated, Section 67-3-418, is amended by deleting the first sentence in its entirety and substituting instead the following language:

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When an end user uses undyed diesel fuel as heating oil or for other non-highway purposes, the end user may apply for a refund of the diesel tax imposed by § 67-3-202. The end user shall not be entitled to a refund, if the end user is a commercial carrier who used the undyed diesel fuel to produce power for a means of transportation or if another provision of law precludes the end user from applying for a refund.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 3, is amended by adding Sections 4 through 10 as a new part.

SECTION 4. This part shall be known and may be cited as the "Transportation Fuel Equity Act."

SECTION 5. The use of diesel fuel by commercial carriers has significant and unique impacts on the state, and the nature of the transportation industry raises significant challenges in the administration and enforcement of fuel taxes; therefore, the general assembly enacts this Transportation Fuel Equity Act to uniformly tax all persons engaging in the activity of using diesel fuels to transport passengers or goods for a fee.

SECTION 6. Unless specifically defined in this part, all terms used in this part have the same meaning as they have elsewhere in this chapter. As used in this part:

(1) "Commercial carrier" means any individual, person, entity, or organization that contracts to transport passengers or goods for a fee, regardless of the mode of transportation;

(2) "Diesel tax" means the tax imposed by § 67-3-202;

(3) "Dyed diesel" means any diesel fuel that is indelibly dyed in accordance with internal revenue service regulations; and

(4) "Means of transportation" means any vehicle or other device employed by a commercial carrier for the purpose of transporting passengers or goods for a fee, including, but not limited to, motor vehicles, trains, marine vessels, and aircraft.

SECTION 7. All diesel fuel, whether undyed or dyed, that is used in this state by a commercial carrier to produce power for a means of transportation is subject to the diesel tax. This section prevails over any other provision of this chapter.

#### SECTION 8.

(a) Each commercial carrier who uses or has used dyed diesel within this state shall be subject to the tax imposed by § 67-3-202 on all such fuel used within this state on or after July 1, 2014, and shall register with the department and file reports on forms prescribed by the department, showing the total number of gallons of dyed diesel used within this state and any other information as may be reasonably required by the commissioner.

(1) An initial report shall be filed on the twentieth (20th) day of the month following the close of the calendar quarter in which this part becomes effective and shall include all activities occurring from July 1, 2014, through the end of the calendar quarter in which this part becomes effective.

(2) Subsequent reports shall be filed on the twentieth (20th) day of the month following the close of each subsequent calendar quarter and shall include all activities occurring during such calendar quarter.

(b) The full amount of the diesel tax imposed by this state on dyed diesel shall be paid at the same time that the commercial carrier transmits the report and no later than the quarterly due date set forth in subdivisions (a)(1) and (a)(2).

#### SECTION 9.

(a) The amount of diesel tax payable to this state on dyed diesel pursuant to this part is determined by multiplying the rate of the diesel tax by the number of gallons of dyed diesel used in this state by the commercial carrier to produce power for a means of transportation.

(b) There shall be allowed a credit against the amount determined under subsection (a) equal to the amount, if any, of sales tax properly paid to another state upon the dyed diesel used in this state by the commercial carrier to produce power for a means of transportation.

(c) There shall also be allowed a credit equal to the amount of tax, if any, that was paid pursuant to chapter 6 of this title on dyed diesel fuel used by the commercial carrier to produce power for a means of transportation and was purchased by the carrier on or after July 1, 2014 and before the effective date of this act. If the credit allowed under this subsection (c) exceeds the amount of tax due under this part, such credit may be carried forward until fully utilized.

SECTION 10. All moneys collected pursuant to this part shall be deposited by the commissioner in the separate account known as the transportation equity trust fund. The funds in this account shall be used by the department of transportation for railways, aeronautics, and waterways related programs and activities. This section prevails over any other provision of this chapter.

SECTION 11. Tennessee Code Annotated, Section 67-6-329(a), is amended by deleting subdivision (2) in its entirety and substituting instead the following:

(2) Motor fuel taxed per gallon by chapter 3, part 2 of this title;

SECTION 12. Section 129 of Chapter 602 of the Public Acts of 2007, is amended by deleting amendatory § 67-4-2306 in its entirety and redesignating the remaining amendatory sections accordingly.

SECTION 13. Section 131 of Chapter 602 of the Public Acts of 2007, is amended in amendatory § 67-4-2503 by adding the following language at the end of the section:

Sales of dyed diesel fuel taxed per gallon by § 67-3-202 are exempt from the tax imposed by this part.

SECTION 14. Section 155 of Chapter 602 of the Public Acts of 2007, is amended in amendatory § 67-6-386 by deleting subsections (b),(c), and (d) in their entirety.

SECTION 15. Section 157 of Chapter 602 of the Public Acts of 2007, is amended by deleting the language “ , and by inserting the language ‘and Section 67-4-2306’ between the word ‘chapter’ and the word ‘from’ in subdivision (2)”.

SECTION 16. Section 160 of Chapter 602 of the Public Acts of 2007, is amended by inserting the language “or” between the language “for use outside this state,” and “is a commercial air carrier” in subsection (a) and is further amended by deleting the following language in subsection (a):

or is a common carrier that actually uses diesel fuel in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce

and is further amended by inserting the language “ , ” between the words “time” and “if” in the third sentence of subsection (a).

SECTION 17. Section 160 of Chapter 602 of the Public Acts of 2007, is further amended by deleting subsection (d) in its entirety.

SECTION 18. Tennessee Code Annotated, Chapter 3, Part 7, is amended by adding the following as a new section:

**67-3-707.**

Each commercial carrier that contracts to transport passengers or goods for a fee, regardless of the mode of transportation, shall maintain records sufficient to reasonably determine the number of gallons of dyed diesel fuel used in this state to

produce power for any vehicle employed by the carrier for the purpose of transporting passengers or goods for a fee, including, but not limited to, motor vehicles, trains, marine vessels, and aircraft.

SECTION 19. Sections 1 through 17 of this act shall take effect on the effective date of a final, unappealable order of a court of competent jurisdiction that the taxes imposed under Tennessee Code Annotated, Title 67, Chapter 6, as applied to fuel used by rail carriers, are preempted by federal law or otherwise invalid, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.